



Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In re:

Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations  
Dalhart and Perryton, Texas

MB Dkt No. 05-144  
RM-11189

**OPPOSITION OF PERRYTON RADIO, INC.**

Perryton Radio, Inc., licensee of station KEYE-FM (Perryton, Texas) hereby provides this opposition to the above-referenced Notice of Proposed Rulemaking. In this proceeding, Radio Dalhart, Inc., has proposed to move the facilities of station KXIT (Dalhart, Texas) further away from the town of Dalhart, apparently in order to improve its service to the city and suburbs of Amarillo. In order to do so, Dalhart would force KEYE-FM involuntarily to change frequencies. Yet the public interest would not be enhanced by Dalhart's proposal to bring another signal to the abundantly-served Amarillo market, and to the contrary there would be a significant public interest loss. The Commission should deny Radio Dalhart's proposal, and should terminate this proceeding.

**I. RADIO DALHART'S PROPOSAL WOULD HARM PERRYTON RADIO, AND THE PUBLIC INTEREST.**

In order to gain improved coverage in and around the city of Amarillo, Radio Dalhart seeks to change the frequency of station KXIT to 96.1 MHz. That frequency is currently used by station KEYE-FM.

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The attached declaration of Sharon Ellzey, the sole shareholder of Perryton Radio, demonstrates the significant harm that would befall station KEYE-FM (and the community of Perryton) if it is required to change frequencies. The frequency of station KEYE-FM is an essential part of its identity. The station has used and promoted itself on the “96” frequency for more than two decades. The numbers form the basis of its logo, and the station is routinely identified on-air and elsewhere by its “ninety-six-one” frequency.<sup>1</sup> Radio Dalhart’s proposal would effectively take away – and usurp for itself – that brand that Perryton Radio spent the better part of 25 years building.

Moreover, as Ms. Ellzey’s declaration describes, Perryton listeners have grown accustomed to tuning to 96.1 to receive KEYE’s programming. Listeners know the frequency, of course, and many have programmed the station onto the pre-set buttons of their radios. Customers who now habitually tune their radios to KEYE-FM would likely suffer significant confusion if that station moved to a different frequency. Not only might they simply lose track of where KEYE is on the FM dial, but many might actually be hoodwinked into listening to KXIT: That station’s broadcasts on 96.1 would likely be audible in a substantial part of KEYE’s current listening area, and apparently will share the same “classic hits” format with the current KEYE programming on 96.1. KEYE would undoubtedly lose listeners, and would suffer real financial harm.<sup>2</sup>

There is no question that the proposed frequency change would cause significant dislocation to Perryton listeners, and would cause significant financial harm to Perryton Radio. It might even jeopardize KEYE’s continued service to the community of

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<sup>1</sup> Ellzey Dec. ¶¶5-9.

<sup>2</sup> Ellzey Dec. ¶¶8, 10-15.

Perryton. Perryton, Texas is a very small town (population 8,000), and an even smaller radio market. As Ms. Ellzey states in her declaration, the loss of listeners and resultant financial loss that would follow KEYE's frequency change (and its replacement by KXIT at 96.1) could actually spell the end of KEYE, as it might prove financially untenable to continue service under those conditions.<sup>3</sup>

The Commission has often recognized that frequency changes cause "a significant amount of confusion to the public," may "result in disruptions to listening and viewing habits and losses of audience."<sup>4</sup> Likewise, "the public has a legitimate expectation that existing service will continue."<sup>5</sup> These policies, particularly in light of the manifest harm that would be occasioned by the proposed frequency change, dictate that the Commission should not require KEYE-FM to surrender its frequency (and some of its listeners) to Radio Dalhart.

## **II. SERVICE IMPROVEMENTS IN THE AMARILLO AREA DO NOT OFFSET LOSSES ELSEWHERE.**

The sole basis for Radio Dalhart's proposed displacement of KEYE-FM is its claim that upgrading and moving its facilities towards the City of Amarillo will enhance the public interest. This claim is dubious at best.

The Commission's own engineering study confirms that there would be a net increase in "gray area" under Radio Dalhart's proposal. An area of some 1,748 square kilometers (with 255 residents) would be reduced from two to one full time aural service. This "gray area" population increase would be partially offset by "gray area"

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<sup>3</sup> Ellzey Dec. ¶¶16-17.

<sup>4</sup> *Columbus, Nebraska*, 59 Rad. Reg. 2d 1184, ¶4 (1986).

<sup>5</sup> *Sells, Arizona*, 19 FCC Rcd. 22459 ¶¶8-9 (Media Bur. 2004).

reduction of 98, for a net “gray area” increase of 157. Radio Dalhart claims that this reduction in service should be offset by an increase in service in its new listening area.

This analysis ignores the fact that virtually all of the increase in service that Radio Dalhart proposes would take place in the Amarillo suburbs – an area that is abundantly served by a multitude of stations. The Commission’s allocation policy recognizes the “rapidly diminishing value to consumers of each additional radio signal.”<sup>6</sup> Radio Dalhart’s proposed gain in heavily-served Amarillo cannot offset losses in lightly served “gray” areas.

Indeed, the FM allocation policy dictates that Radio Dalhart’s proposed increase in service to Amarillo is essentially irrelevant for purposes of this analysis. The Commission’s priorities are: (1) first full time aural service, (2) second full time aural service, (3) first local service, and (4) other public interest matters.<sup>7</sup> Radio Dalhart proposes a net loss in priority two, but claims that a priority four gain should somehow offset the priority two loss. This argument ignores the Commission’s allocation priorities and precedents, which refuse to weigh priority four benefits against detriments to higher priorities.<sup>8</sup> These policies and cases dictate that Radio Dalhart’s proposal must be rejected.

Moreover, even if the Commission were to ignore the clear public interest losses under priority two and to engage in a weighing exercise under priority four, the net effect of Radio Dalhart’s proposal would be a detriment to the public interest. Radio

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<sup>6</sup> *Greenup, Kentucky*, 6 FCC Rcd 1493 ¶13 (1991).

<sup>7</sup> *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

<sup>8</sup> *See, e.g., Cumberland, Kentucky*, 17 FCC Rcd 5024 ¶10 (Allocations Branch, 2002).

Dalhart produces no evidence that listeners in the Amarillo area will receive any particular benefit from gaining an additional FM signal, on top of the many that they already receive. By contrast, the attached declaration of Sharon Ellzey demonstrates the significant harm that may be caused by the relocation of station KEYE-FM. It would disrupt listening habits, cause significant financial hardship, and impose a heavy burden on the business. It is possible that the resulting disruption in service, loss of listeners, and financial hardships could jeopardize the ability of KEYE-FM to continue in business.<sup>9</sup>

### **III. RADIO DALHART MAY LACK THE ABILITY TO PAY THE COSTS OF RELOCATION.**

The Commission's rules and precedent make plain that a petitioner must pay all of the costs of a licensee whose station is relocated involuntarily. Those costs are not limited to the cost of obtaining and installing new equipment, but rather include:

- "Engineering, legal and equipment;"
- "Printing (logs and stationary)"
- "[E]xpenses while station is off the air"
- "Advertising promotion for new frequency;" and
- "Miscellaneous (telephone calls, etc.)."<sup>10</sup>

The cost of re-tuning and re-branding a station are not insignificant. The attached declaration demonstrates that the direct financial costs of the frequency change will likely

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<sup>9</sup> Ellzey Dec. ¶¶9-17.

<sup>10</sup> *Leitchfield, Kentucky*, Second Report and Order, 8 FCC2d 159 ¶12 (1967).

be in excess of \$50,000, and perhaps twice that – or more, if there are unexpected problems.<sup>11</sup>

The attached declaration likewise raises serious issues concerning the ability of Radio Dalhart to pay these costs.<sup>12</sup> The Commission can, and in this case should “require a licensee to demonstrate its financial ability.”<sup>13</sup> Because Radio Dalhart already is the licensee of station KXIT, it should accordingly require Radio Dalhart to demonstrate its ability to pay these costs. A mere promise or generalized claim of solvency will not suffice, instead the Commission should require that Radio Dalhart, as the licensee, have “the necessary funds available and placed in escrow.” The Commission should recognize the magnitude of the obligation that Radio Dalhart purports to undertake, and should not adopt the proposed rulemaking without an investigation into its actual ability to pay.

#### **IV. THE PROPOSED MIGRATION OF KEYE-FM MAY BE UNNECESSARY.**

Radio Dalhart’s proposal does not claim that a frequency change to 96.1, and relocation of KEYE-FM from that frequency, is the only way to accomplish its goal of improved service to the Amarillo area. The Commission should not grant the proposed reallocation without seeking comment on alternative proposals.

#### **V. CONCLUSION.**

Radio Dalhart’s proposal is akin to asking a business that has been in the same location for 25 years to change locations, and at the same time to change its brand

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<sup>11</sup> Ellzey Dec. ¶¶18-21.

<sup>12</sup> Ellzey Dec. ¶23.

<sup>13</sup> *Columbus, Nebraska*, 59 Rad. Reg. 2d 1184 ¶6 (1986).

and logo, while allowing another firm selling the same products to occupy that location and to adopt that brand. If accepted, it would cause serious harm to Perryton Radio, and to the public interest at large, while the only benefit that Radio Dalhart proffers is the addition of one more radio signal to the already congested Amarillo metropolitan area. The Commission should reject this proposal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. S. Carnell', with a horizontal line drawn underneath it.

William S. Carnell  
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December 19, 2005

**Certificate of Service**

I, William S. Carnell, hereby certify that the attached Opposition was served on the following by U.S. Mail, postage prepaid, on this the Nineteenth day of December, 2005:

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A handwritten signature in black ink, appearing to read 'W. S. Carnell', written over a horizontal line.

William S. Carnell